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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/531,956	03/21/2000	Bryan M. Eagle III	11459/1	6873

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KENYON & KENYON  
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WASHINGTON, DC 20005

EXAMINER

MORGAN, ROBERT W

ART UNIT PAPER NUMBER

3626

DATE MAILED: 03/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/531,956

Applicant(s)

EAGLE, BRYAN M.

Examiner

Robert W. Morgan

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ML

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

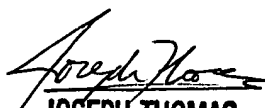
Claim(s) allowed: NONE.

Claim(s) objected to: NONE.

Claim(s) rejected: 120-128.

Claim(s) withdrawn from consideration: NONE.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
**JOSEPH THOMAS**  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

*Advisory Action*

~~In the remarks, Applicants argue in substance that, (1) Walker et al. fails to show that an~~  
aircraft is reserved to fly only when a “minimum total payment requirement is met” based on the reservation system having matched a sufficient number of individual reservation bids to the aircraft owner’s specified flight availability; (2) Walker does not teach terminating a flight if there are empty seats; (3) Jonas teaches away from a passenger-oriented reservation systems that permits individual passengers to reserve individual passengers to reserve individual requests to fly from departure location to an arrival location; and (4) There is no suggestion or motivation to combine the references of Walker and Jonas.

In response to Applicants argument that, (1) Walker et al. fails to show that an aircraft is reserved to fly only when a “minimum total payment requirement is met” based on the reservation system having matched a sufficient number of individual reservation bids to the aircraft owner’s specified flight availability and (2) Walker does not teach terminating a flight if there are empty seats. The Examiner respectfully submits the Walker reference teaches a CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer and compared against the CPO rules provided by the airline and as a result of the comparison the CPO is either accepted, rejected or countered by the airline. Thereafter, the customer is notified of the response of the airlines to the CPO. If an airline accepts the CPO, or if the customer accepts a counteroffer from the airline, a ticket is then booked by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67). This suggests that once an airline ticket is booked, a

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record including the total payment of the transaction is process by the CPO management system.

The process would also include the availability of seats and the total amount of money paid in

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order for the flight to be feasible. Furthermore, Walker teaches a CPO rules generation process (1900, Fig. 19) at step 1910 where it is determined whether a flight is likely to depart with empty seats and if not the flight is terminated (see: column 23, line 59 to column 60, line 13 and Fig. 19).

In response to Applicants argument that, (3) Jonas teaches away from a passenger-oriented reservation systems that permits individual passengers to reserve individual passengers to reserve individual requests to fly from departure location to an arrival location. The Examiner respectfully submits the reference Jonas teaches AirCharter.com which is an online real-time air charter reservation system with Internet booking capabilities for 2,000 aircraft from 800 charter operators (see: paragraph 2). In addition, Jonas further teaches that SkyJet.com acts as an intermediary between customers (passenger) and suppliers (private aircraft carrier) (see: paragraph 9). Additionally, Walker et al. teaches a CPO management process (1600, Fig. 16a) where a CPO, which is a binding offer containing one or more conditions submitted by a customer (110, Fig. 1) for the purchase of an item, such as air travel, at a customer-defined price, received from a customer is either accepted, rejected or countered by the airline. If the airline accepts the CPO, or if the customer accepts a counteroffer from the airline, a ticket is then booked by the CPO management system (100, Fig. 1) (see: column 5, lines 31-43 and column 7, lines 55-67). Therefore, Jonas teaching of AirCharter's 800 charter operators incorporated with Walker's passenger-oriented CPO management process describes Applicant's invention. Furthermore, the Examiner disputes that Jonas' remarks provide a teaching away from the

manner in which Examiner applied the reference in addressing claim limitation. As such, it appears that Applicant merely considers bits and pieces of Examiner's applied art individually, in a vacuum, without considering the appropriate teachings of the applied reference collectively as a whole.

In response to Applicants argument that, (4) There is no suggestion or motivation to combine the references of Walker and Jonas. The Examiner respectfully submits that establishing a *prima facie* case of obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention (see: paper number 11).

In addition, the Examiner recognizes obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and

(iii) the question is not express teaching of references, but what they would suggest.

Additionally, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

As such, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated by the Examiner in the prior Office Action (paper number 6), *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

Furthermore, the motivation to combined the teachings of the Jonas within Walker et al. reference as given on page 5 of the previous Office Action (paper number 11) is suggested in a passage from the Jonas paragraph 1, "giving customers instant access to thousands of private aircraft carriers".